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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,604	08/19/2003	Marie K. Walsh	T9105.C	5579

20450 7590 12/13/2006

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/644,604	WALSH ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-119* is/are pending in the application.

4a) Of the above claim(s) *7-12,27-55,62-67 and 83-108* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 13-26, 56-61, 68-82, and 109-119* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims drawn to an invention nonelected with traverse in the paper filed 3/3/06. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Terminal Disclaimer

2. The Terminal Disclaimer filed 9/21/06 has been approved and the subject double patenting rejection has been withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-6, 13-16, 22-26, 56-61, 68-71, 77-82, 109-113, and 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feldbrugge et al.

Feldbrugge et al discloses a texturized protein material produced by thermoplastic extrusion[1] wherein same contains whey which may be available in either concentrate or isolate form (e.g. col. 4, lines 3-21). It should be noted that Feldbrugge et al further discloses that a certain amount of the protein employed must be

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[1] Morimoto et al refers to Feldbrugge et al for its thermoplastic extrusion process (see col. 1, lines 31-33).

undenatured (see col. 3, line 64). Feldbrugge also discloses the use of wheat protein but is silent regarding the combination of, for example, wheat and whey proteins. However, since each protein component serves the same purpose, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same together to serve the same purpose. It is obvious to combine two component each of which is taught by the prior art for the same purpose to form a third composition for the same purpose. In re Kerkhoven 205 USPQ 1069.

Feldbrugge et al further discloses the use of a pH adjusting agent by way of, for example, ammonium carbonate, and it would have been further obvious to have included same in products therein containing whey for the same reason.

Feldbrugge et al also discloses the inclusion of starch ingredients (col. 4, line 65) but is silent regarding the more specific use of cornstarch as claimed. However, cornstarch is notoriously well known, and, absent a showing of unexpected results, it would have been further obvious to have included same as a matter of preference depending on, for example, availability or cost.

The claims further call for particular amounts of the protein and polysaccharide components of the product. However, such determination would have been well within the purview of one having ordinary skill in the art, and it would have been obvious for said one at the time of the invention to have arrived at such amounts as a matter of preference depending on, for example, cost or availability of such ingredients.

The instant claims call for the inclusion of sweet whey. Although Feldbrugge et al discloses the use of whey in general, same is a notoriously well known type of whey,

and it would have been further obvious to have employed sweet whey as a matter of preference in view of, for example, cost and availability.

5. Claims 17, 18, 72, 73, 114, and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feldbrugge et al taken together with Villagran et al.

The claims further call for the inclusion of more specific polysaccharides and calcium ingredients not taught by Feldbrugge et al (e.g. pectin and calcium chloride). However, it is known to employ such ingredients in extruded food products as taught, for example, by Villagran et al which teaches the inclusion of a variety of polysaccharide materials (carboxymethylcellulose, maltodextrin, pectin, etc.). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such ingredients in the product of Feldbrugge et al wherein same would possess, for example, less gumminess (see Abstract).

6. Claims 19-21, 74-76, and 116-118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feldbrugge et al taken together with JP 58-28235.

The claims further call for the inclusion of a calcium source (e.g. calcium chloride). However, it is well known to employ calcium sources such as calcium chloride in extruded proteinaceous food products as taught, for example, by JP 58-28235. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included calcium chloride in the product of Feldbrugge et al for the reasons employed in JP 58-28235 and/or, simply, for calcium fortification of a food product.

Response to Arguments

7. Applicant's arguments filed 9/21/06 have been fully considered but they are not persuasive.

Applicant argues that Feldbrugge et al does not employ thermoplastic extrusion in the manner contemplated by Applicants. It should be noted, however, that Morimoto et al (col. 1, lines 31-33) characterizes the process of Feldbrugge et al as being one employing thermoplastic extrusion. The instant claims do not appear to distinguish the apparent difference in meaning between thermoplastic extrusion as contemplated by Applicant and that used in Feldbrugge (as addressed by Morimoto et al). The term "thermoplastic extrusion" has been considered broadly wherein such definition would naturally encompass the characterization of Morimoto et al. Nevertheless, it appears that Feldbrugge et al discloses an extrusion process which falls within the definition of thermoplastic extrusion set forth in Applicant's response (i.e. definition no. 4, page 7) wherein a powder-like material is pressed and heated simultaneously within a screw extruder and further wherein the material is forced through a die and cooled (inherently resulting in hardening of same). See Example 1 and 9 wherein the rapid cooling occurs in Example 1 by a change in temperature of about 75 C and/or by virtue of being exposed to room temperature outside the extruding apparatus.

Applicant argues that Villagran does not teach, for example, shear and heating and employs steps not contemplated in Feldbrugge et al (i.e. gum addition). However, Villagran was not applied alone, but in combination with Feldbrugge et al which already discloses the steps of shear and heating. Villagran et al was applied as an example for teaching known ingredients used in extruded food products wherein it would have been

obvious to have employed such known, specific ingredients in Feldbrugge et al to, for example, avoid gumminess in the final product.

Applicant argues JP 58-282325 as though same were employed as the primary reference. Most of the invention is disclosed by Feldbrugge et al except for several limitation as addressed above was well as the inclusion of a calcium source as called for in claims 19-21, 74-76, and 116-118. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed calcium chloride in an extruded proteinaceous food product for the reasons employed in JP 58-28235 and/or simply for calcium fortification of a food product.

Applicant argues a variety of omissions regarding Feldbrugge et al with respect to the instant claims. However, all of these differences have been addressed in view of the rejections above.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

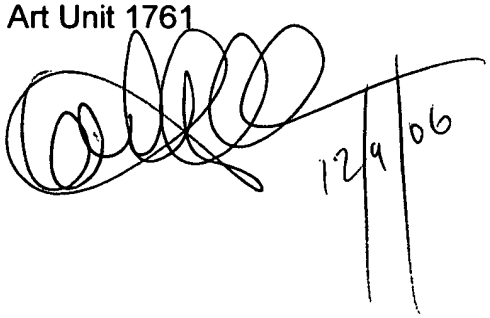
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
December 9, 2006